

IN AND BEFORE THE
ENVIRONMENTAL PROTECTION AGENCY

PROTEST OF)
)
LAWSON ENVIRONMENTAL SERVICE LLC)
)
Solicitation Number: SOL-R7-14-00008)
Agency: Environmental Protection Agency)
Office: Office of Acquisition Management)
Location: Region VII)
_____)

AGENCY LEVEL POST AWARD BID PROTEST
IN ACCORDANCE WITH
EPAAR PART 1533

TO: The Agency Official designated to receive protests and to:

Tyrone Lewis (Contracting Officer)
Region 7 US Environmental Protection Agency
11201 Renner Blvd.
Lenexa KS 66219 USA

COMES NOW, the Protestor LAWSON ENVIRONMENTAL SERVICES

(hereinafter "Protestor"), by and through its undersigned counsel and states as follows:

1. Counsel for the Protestor's & the Protestor's contact information is:

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2. The Agency's contact information as stated in the Solicitation is:

Contracting Office Address:
Region 7 US Environmental Protection Agency
11201 Renner Blvd.
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Place of Performance:
U.S. EPA Region 7
11201 Renner Blvd.
Lenexa KS 66219 USA

Point of Contact(s):
Tyrone Lewis

lewis.tyrone@epa.gov

3. The Solicitation at issue involves the procurement generally known by the parties as "F--Remedial Action - Washington County Lead District".

4. On March 26, 2014 the Agency published its Solicitation. The Agency published the Solicitation expressing its intent to solicit proposals for the above referenced procurement utilizing the lowest price, technically acceptable source selection process.

5. On May 27, 2015, the Agency notified the Protestor that it had not been selected for award. The Protestor was determined to be technically acceptable but the lower priced Awardee was erroneously determined to be technically acceptable as well.

ARGUMENT

I. PROTESTOR ALLEGES THAT COASTAL-ENVIROWORKS JV KNOWINGLY SUBMITTED FALSE INFORMATION IN THEIR PROPOSAL IN AN EFFORT TO MISLEAD THE EPA INTO DEEMING THEIR COMPANY TECHNICALLY ACCEPTABLE

In Section M-4, Factor 2 of the solicitation the evaluation criteria requires the offeror to provide resumes for four key positions in order to be deemed technically qualified for award. Furthermore, Factor 2 is clear that key personnel must be employed by the Prime Contractor or a “letter of intent to hire” must be included in the proposal.

The Protestor alleges that the Awardee Coastal-Enviroworks JV proposed [REDACTED] [REDACTED] as a member of their Key Personnel (possibly their Project Superintendent). [REDACTED] [REDACTED] did not agree to or accept being listed as key personnel for the Awardee. **(Exhibit A)**. At all times material hereto, [REDACTED] was an employee of Lawson, not the Awardee. **(Exhibit B)**. [REDACTED] is still employed by Lawson to this day. **(Id.)**

As such, the Awardee’s misrepresentations of material facts renders their proposal technically unacceptable.

LES learned after bids were submitted that although [REDACTED] had been contacted by Marcos Mateous (President of Enviroworks) one day prior to the bid due date about being named in Coastal-Enviroworks proposal, [REDACTED] declined the offer and did not agree to be named in their proposal. **(Exhibit A)**. In fact, [REDACTED] has declined employment offers made by Coastal-Enviroworks on multiple occasions.

Factor 2 is explicit in requiring that proposed key personnel be either current employees of the prime or that they document an existing “letter of intent to hire” for each nonemployee. For clarity, a ‘letter of intent to hire’ requires agreement that provides an offer of employment that includes material terms and conditions such as salary and benefits. Enviroworks-Coastal did not provide a letter of intent to [REDACTED]. Specific employment terms were never discussed or agreed verbally or otherwise by [REDACTED]. Without verbal or written acceptance of actual or potential employment, Coastal-Enviroworks misrepresented the facts and had absolutely no authority to name [REDACTED] [REDACTED] as a Key Person in their proposal. The EPA relied on the Awardee’s misstatement of facts and therefore erroneously believed that the Awardee’s proposal was technically acceptable when in fact it was technically unacceptable in accordance with the terms and conditions of the Solicitation.

II. COASTAL-ENVIROWORKS JV’s SUBMISSION OF FALSE INFORMATION TO THE GOVERNMENT WILL RESULT IN VIOLATION OF THE FALSE CLAIMS ACT

If Coastal-Enviroworks performs work that was awarded as a direct and proximate result of submitting false information in their proposal it will violate the False Claims Act (31 U.S.C. §§ 3729–3733) when they submit a payment request. The False Claims Act (FCA), as amended in 1986, provides for penalties for anyone who knowingly submits or causes the submission of false or fraudulent claims to the United States for government funds.

The FCA defines “knowingly” as a person, with respect to information – who acts in reckless disregard of the truth of the falsity of the information. In this case, Coastal-Enviroworks’ submission of false information in their proposal resulted the Agency accepting as ineligible offer. Therefore, all payment requests that are made in relation to the contract will be based on false information, thereby constituting false claims for payment.

III. BAIT AND SWITCH OF KEY PERSONNEL

The solicitation requested the names and resumes of qualified personnel for four key positions. These four positions comprised the technical requirements for Factor 2”. The importance placed on Key Personnel is clear in that the EPA considered failure to provide qualified key personnel would result in an offer deemed to be non-qualified for award. Considering that Coastal-Environmental had no agreement with [REDACTED], it knew that [REDACTED] will not be working for the Awardee on this project. Therefore, the issue to be addressed is whether the Awardee can switch key personnel after award. They cannot.

This is because the GAO has often found that an offeror may not propose to use specific personnel that it does not expect to use during contract performance. Doing so would have an adverse effect on the integrity of the competitive procurement system and generally provides a basis for proposal rejection (See AdapTech Gen. Scientific, LLC B-293867).

For a protester to establish an improper bait-and-switch scheme occurred, the protester must show that a firm either knowing or negligently represented that it would rely on specific personnel that it did not reasonably expect to furnish during contract

performance and that the misrepresentation was relied on by the agency, and that the misrepresentation had a material effect on the evaluation results (See Data Mgmt. Servs. JV, B-299702).

In this case, Coastal-Enviroworks clearly purposefully represented that they would hire [REDACTED] even though they did not intend to hire [REDACTED] on the project. The Agency clearly relied on the Awardee's misrepresentation that it had an intent to hire agreement with [REDACTED].

Coastal-Environmentals unauthorized use of [REDACTED] name and qualifications meet every paramater the GAO uses to determine whether or not a bait-and-switch scheme has been employed.

IV. IMPROPER EVALUATION OF PROPOSALS

The Agency failed to properly analyze the Awardee's proposal in accordance with the terms and conditions of the Solicitation. Under Factor 2 - Key Personnel, the Awardee was erroneously deemed to be technically acceptable. This is because the Awardee's proposal does not demonstrate that the resumes of all key personnel are employees of the Prime Contractor nor are all of the non-employee resumes accompanied by a proper letter of intent to hire by the Awardee upon contract award. Instead, the Awardee proposed to use one or more of the Protestor's employees but did not provide any proper letters of intent to hire those persons as required by the Solicitation. Had the Agency properly evaluated the Awardee's proposal as it relates to Factor 2 Key Personnel, the Awardee's Key Personnel rating would have been evaluated as "FAIL"

and the Protestor, being next in line for award, would have received the award for this procurement.

The Agency failed to analyze the Protestor's proposal in the same manner as the Awardee's in that the Awardee was improperly given a favorable rating on the Key Personnel factor for one or more of the Protestor's employees. As such, the Agency improperly placed the Protestor at a competitive disadvantage as compared to the Awardee.

V. TIMELINESS

The Protestor was advised of the Agency's decision on May 27, 2015. A requested and required debrief for the Protestor was held on June 2, 2015. This protest is timely filed in accordance with Agency rules.

VI. PREJUDICE

As a direct and proximate result of the actions complained herein, the Protestor was denied a fair opportunity for award. Protestor is prejudiced because there would have been a reasonable possibility that it could have been awarded this procurement if the Agency had properly evaluated the proposals received in accordance with the Solicitation's stated evaluation criteria. Since the Awardee offered to use specific personnel that it did not expect to use during contract performance, this had an adverse effect on the integrity of the competitive procurement system and the Awardee's proposal should have been rejected. The Protestor is next in line for award.


VII. REQUESTED RELIEF

Protestor requests a stay on performance pending resolution of this protest.

Protestor requests a ruling by the agency on the merits of this protest. In accordance with agency procedures, the Protestor requests an independent review of this protest at a level above the contracting officer. If practicable, the Protestor requests that the officials designated to conduct the independent review of this protest be persons who have not had previous personal involvement in the procurement.

WHEREFORE, the Protestor respectfully requests that the Protest be sustained, that the Award to the Awardee be vacated and that the Protestor be awarded this procurement.

Dated June 5, 2015

A handwritten signature in dark ink, appearing to read "Frank V. Reilly", is written over a horizontal line.

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EXHIBIT A



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EXHIBIT B



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